



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10**

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REGIONAL  
ADMINISTRATOR'S  
DIVISION

June 2, 2022

Shauna Everett  
U.S. Fish and Wildlife Service Headquarters  
5275 Leesburg Pike  
Falls Church, VA 22041

Dear Shauna Everett:

The U.S. Environmental Protection Agency has reviewed the Fish and Wildlife Service's Notice of Intent to prepare an Environmental Impact Statement for the Elliott State Research Forest Habitat Conservation Plan in support of Oregon Department of State Lands request for Endangered Species Act Incidental Take Permit issuance (EPA Region 10 Project Number 22-0024-USFWS). EPA has conducted its review pursuant to the National Environmental Policy Act and our review authority under Section 309 of the Clean Air Act. The CAA Section 309 role is unique to EPA and requires EPA to review and comment publicly on any proposed federal action subject to NEPA's environmental impact statement requirement.

According to the NOI, FWS proposes to evaluate the potential environmental impacts associated with an authorization for incidental take of three federally protected species (northern spotted owl, marbled murrelet, and Oregon Coast coho) during the HCP activities located in Coos and Douglas Counties in southwestern Oregon. The HCP activities include research projects, mechanical vegetation control and controlled burning, and supporting infrastructure. The proposed HCP will support the anticipated ITP issuance. After analysis of potential impacts from the proposed action, FWS will process ODSL's request for an ITP, then decide whether to grant, grant with conditions, or deny the ITP.

EPA appreciates the information provided in the NOI. EPA offers the FWS the enclosed scoping comments on specific topics we believe are important to consider in the NEPA analysis for this project.

Thank you for the opportunity to comment on this project proposal early in the NEPA process. If you would like to discuss these comments, please contact Emily Bitalac of my staff at 206-553-2581 or [bitalac.emily@epa.gov](mailto:bitalac.emily@epa.gov), or me at 206-553-1774 or [chu.rebecca@epa.gov](mailto:chu.rebecca@epa.gov).

Sincerely,

Rebecca Chu, Chief  
Policy and Environmental Review Branch

Enclosure

**U.S. EPA Detailed Comments on the Notice of Intent for  
the Elliott State Research Forest Habitat Conservation Plan  
Coos and Douglas Counties, Oregon  
June 2022**

**Water Quality and Aquatic Resource Impacts**

Section 303(d) of the Clean Water Act requires the State of Oregon and Tribes with EPA-approved Water Quality Standards identify water bodies that do not meet WQS. This section of the CWA also requires the development of water quality restoration plans (Total Maximum Daily Loads, or TMDLs) to meet established water quality criteria and associated beneficial uses. Activities authorized under the proposed HCP may impact aquatic resources in the planning area. To address these potential impacts to water quality and aquatic resources, EPA recommends that the EIS include the following information:

- Acreages and channel lengths, habitat types, values, and function of waters likely to be impacted. The nature of the impacts and specific pollutants likely to affect those waters should be described.
- Water bodies potentially affected by the project that are listed on the State of Oregon most current EPA-approved 303(d) list and a description of how the project would meet the CWA's antidegradation provisions, which prohibit degrading water quality.
- Existing restoration and enhancement efforts for potentially impacted waters, how the proposed project would coordinate with on-going protection efforts, and any mitigation measures, including compensatory mitigation required under the CWA, to reduce impacts to Waters of the U.S.
- Whether the project would result in discharge of dredged or fill materials into surface waters and the permit requirements associated with that activity (e.g., CWA §404 permit, permit requirements from the State of Oregon<sup>1</sup>). The EIS would need to describe this permit application processes and recommended measures to protect aquatic resources from impacts resulting from the proposed project.
- Floodplain impacts and actions to be taken to minimize related impacts. See CWA §404 and Executive Order 11988, *Floodplain Management*.<sup>2</sup>

***Sedimentation***

Roads can contribute more sediment to streams than any other management activity and interrupt the subsurface flow of water, particularly where roads cut into steep slopes. In addition, roads have been shown to produce elevated volumes of chronic surface sediment runoff from the road surface. Roads and their use contribute to habitat fragmentation, wildlife disturbance, and the introduction or exacerbation of noxious weeds. The EIS should include a description of how roads in the project area impact aquatic resources, provide the current number of road miles and density, and discuss the change in road miles, density, and usage levels that will occur as a result of the project. To the maximum extent practicable, EPA recommends focusing on the use of existing system roads to minimize road construction impacts on previously unimpacted areas.

***Stream Temperature***

EPA recommends the EIS explain the importance of maintaining cold headwater streams to benefit covered aquatic species, especially in consideration of the warming of Oregon's streams' temperatures due to climate change. Working with NOAA, FWS, states, tribes and other scientific experts, EPA

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<sup>1</sup> <https://www.oregon.gov/dsl/WW/Pages/Permits.aspx>.

<sup>2</sup> <https://www.epa.gov/cwa-404/floodplain-management-executive-order-11988>.

issued Guidance for Pacific Northwest State and Tribal Temperature Water Quality Standards<sup>3</sup> demonstrating that in addition to biologically based numeric criteria, protection of cold water is integral to maintaining a complex natural thermal regime with spatial temperature patterns important to the recovery of protected species. The EIS should explain how NOAA/FWS actions are maintaining spatial temperature patterns important to the recovery of protected species.

### **Air Quality Impacts**

Because HCP project activities may result in impacts on air quality, EPA recommends that the EIS for the project include:

- A detailed discussion of ambient air conditions (baseline or existing conditions), National Ambient Air Quality Standards (NAAQS), and criteria pollutant non-attainment areas in the analysis area and vicinity, if applicable.
- Estimation of criteria pollutant emissions for the analysis area and a discussion of the timeframe for release of these emissions from construction through the lifespan of the proposed project. The EIS should specify all emission sources and quantify related emissions.
- Mitigation measures to minimize impacts to air quality.

### **Stand Management**

EPA recommends that the EIS state how FWS will avoid and minimize potential timber harvest impacts such as accelerated erosion, impacts to sensitive resources, and introduction of invasive species. In terms of silvicultural management, EPA recommends FWS ensures that proposed activities are consistent with an understanding of natural disturbance and stand development processes and disclose the level of consistency likely to be achieved.

### **Threatened and Endangered species**

In addition to the ITP covered species, EPA recommends that the EIS identify impacts to other endangered, threatened, or candidate species listed under the Endangered Species Act, state sensitive species, and their habitats (including critical habitat) occurring in the analysis area.

### **Alternatives**

Identify a range of alternatives that avoid, minimize, and compensate for impacts to water, air, wildlife, and other resources.

### **Cumulative Effects**

Cumulative effects are those that are reasonably foreseeable, related to the proposed action under consideration, and subject to the agency's jurisdiction and control. EPA recommends that the EIS analysis consider evaluation of impacts over the entire area of impact and consider the effects of projects under the HCP when added to other past, present, and reasonably foreseeable future projects in the analysis area. Potential water quality and aquatic life impacts due to implementation of activities in the Western Oregon HCP DEIS may be relevant to include. Considering all the actions in this area together would help decision makers to understand more clearly what the cumulative impacts on environmental resources are likely to be. EPA has issued guidance on how to provide comments on the assessment of cumulative impacts, *Consideration of Cumulative Impacts in EPA Review of NEPA Documents*.<sup>4</sup> The

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<sup>3</sup> U.S. Environmental Protection Agency. 2003. EPA Region 10 Guidance for Pacific Northwest State and Tribal Temperature Water Quality Standards. EPA 910-B-03-002. Region 10 Office of Water, Seattle, WA

<sup>4</sup> <https://www.epa.gov/sites/production/files/2014-08/documents/cumulative.pdf>.

guidance states that to assess the adequacy of the cumulative impact assessment, there are five key areas to consider:

- Resources, if any, that are being cumulatively impacted.
- Appropriate geographic area and the time over which the effects have occurred and will occur.
- A benchmark or baseline.
- Scientifically defensible threshold levels.
- All past, present, and reasonably foreseeable future actions that have affected, are affecting, or would affect resources of concern.

### **Climate Change Adaptation**

EPA recommends that the EIS include a discussion of reasonably foreseeable effects that changes in the climate may have on the proposed project, and what impacts the proposed project will have on climate change consequences. These considerations could help inform the development of measures to improve the resilience of the project.

### **Monitoring and Adaptive Management**

EPA recognizes that the HCP has included information on proposed monitoring and adaptive management. EPA recommends that the EIS describe the monitoring program designed to assess implementation of the HCP over time and measure the effectiveness of the HCP in achieving conservation goals. We also recommend that the EIS describe a mechanism to consider and implement additional mitigation measures. In addition, the adaptive management and monitoring plan in the EIS may include the following elements:

- Establish how current analysis in the project area had been or will be done, and how this analysis will inform monitoring priorities.
- Lay out monitoring questions that will be used to inform the adaptive management process.
- Define how success will be measured.
- Provide information to determine whether management direction is being followed, whether desired results are being achieved, and whether underlying assumptions are valid.
- Be as specific as possible about who is the responsible decisionmaker at critical steps of the monitoring plan.
- Evaluate monitoring strategies periodically to determine if questions and protocols are still relevant and if changes are needed.

### **Environmental Justice**

Executive Order 12898<sup>5</sup> directs federal agencies to identify and address the disproportionately high and adverse human health on environmental effects of their actions on minority and low-income populations, to the greatest extent practicable and permitted by law. EO 13985<sup>6</sup> should also be incorporated to FWS's analysis since it includes a modern definition of equity that clarifies a broader approach.

Assessing EPA's Environmental Justice Screening and Mapping Tool (EJScreen) information is a useful first step in understanding or highlighting locations that may be candidates for further review or

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<sup>5</sup> EO 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. <https://www.federalregister.gov/documents/1994/02/16/94-3685/federal-actions-to-address-environmental-justice-in-minority-populations-and-low-income-populations>.

<sup>6</sup> EO 13985: Advancing Racial Equity and Support for Underserved Communities Through the Federal Government. <https://www.federalregister.gov/documents/2021/01/25/2021-01753/advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government>.

outreach.<sup>7</sup> EPA considers a project to be in an area of potential environmental justice (EJ) concern when an EJSscreen analysis for the impacted area shows one or more of the eleven EJ Indexes at or above the 80th percentile in the nation and/or state. At a minimum, EPA recommends an EJSscreen analysis consider EJSscreen information for the block group(s) which contains the proposed action(s) and a one-mile radius around those areas.

It is important to consider all impacted areas by the proposed action(s). Areas of impact can be a single block group or span across several block groups and communities.<sup>8</sup> When assessing large geographic areas, consider the individual block groups within the project area in addition to an area wide assessment. Important caveats and uncertainties apply to this screening-level information, especially in rural areas, so it is essential to understand the limitations on appropriate interpretations and applications of these indicators.<sup>9</sup> As the screening tool does not provide data on every environmental impact and demographic factor that may be relevant to a particular location and/or proposed project, consider additional information in an EJ analysis to supplement EJSscreen outputs. Further review or outreach may be necessary for the proposed action(s). To address these potential concerns, EPA recommends:

- Applying methods from "Environmental Justice Interagency Working Group Promising Practices for EJ Methodologies in NEPA Reviews" report, or the Promising Practices Report, to this project.<sup>10</sup> The Promising Practices Report is a compilation of methodologies gleaned from current agency practices concerning the interface of EJ considerations through NEPA processes.
- Characterizing project site(s) with specific information or data related to EJ concerns.<sup>11</sup>
- Describing potential EJ concerns for all EJ Indexes at or above the 80th percentile in the state and/or nation.
- Describing block groups which contain the proposed action and at a minimum, a one-mile radius around those areas.
- Describing individual block groups within the project area in addition to an area-wide assessment.
- Supplementing data with county level reports and local knowledge.

After FWS has determined if communities with EJ characteristics exist in the project area, EPA recommends the EIS discuss whether these communities would be potentially affected by individual or cumulative actions of the proposed action. EPA also recommends addressing whether the alternatives would cause any disproportionate adverse impacts, such as higher exposure to toxins; changes in existing ecological, cultural, economic, or social resources or access; cumulative or multiple adverse exposures from environmental hazards; or community disruption.

If it is determined that communities with EJ characteristics may be disproportionately impacted, describe in the EIS the measures taken by FWS to fully analyze the environmental effects of the action

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<sup>7</sup> <https://ejscreen.epa.gov/mapper/>.

<sup>8</sup> Agencies should define community as “either a group of individuals living in geographic proximity to one another, or a geographically dispersed set of individuals (such as migrant workers or Native Americans), where either type of group experiences common conditions” (Interim Justice40 Guidance – Executive Order 14008 on Tackling the Climate Crisis at Home and Abroad, January 27, 2021).

<sup>9</sup> <https://www.epa.gov/ejscreen/technical-documentation-ejscreen>.

<sup>10</sup> [https://www.epa.gov/sites/default/files/2016-08/documents/nepa\\_promising\\_practices\\_document\\_2016.pdf](https://www.epa.gov/sites/default/files/2016-08/documents/nepa_promising_practices_document_2016.pdf).

<sup>11</sup> For more information about potential EJ concerns, refer to the July 21, 2021, Memorandum for the Heads of Departments and Agencies Interim Implementation Guidance for the Justice40 Initiative. <https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf>.

on the affected communities and identify potential mitigation measures. Clearly identify a monitoring and adaptive management plan to ensure that mitigation is effective and successful.

### **Coordination with Tribal Governments**

EPA encourages FWS to consult with the Tribes and incorporate feedback from the Tribes when making decisions regarding the project. EPA recommends the EIS describe the issues raised during the consultations and how those issues were addressed.

### ***National Historic Preservation Act***

Consultation for Tribal cultural resources is required under Section 106 of the National Historic Preservation Act. Historic properties under the NHPA are properties that are included in the National Register of Historic Places or that meet the criteria for the NRHP. Section 106 of the NHPA requires a federal agency, upon determining that activities under its control could affect historic properties, to consult with the appropriate State Historic Preservation Office/Tribal Historic Preservation Office. Under NEPA, any impacts to tribal, cultural, or other treaty resources must be disclosed in the EIS. Section 106 of the NHPA requires that federal agencies consider the effects of their actions on cultural resources, following the regulation at 36 CFR 800.

In the EIS, EPA recommends the FWS discuss how the project will avoid or minimize adverse effects on the physical integrity, accessibility, or use of cultural resources or archaeological sites, including traditional cultural properties (TCPs), throughout the project area. Discuss mitigation measures for archaeological sites and TCPs. EPA encourages FWS to append any Memoranda of Agreements to the EIS, after redacting specific information about these sites that is sensitive and protected under Section 304 of the NHPA. EPA also recommends providing a summary of all coordination with Tribes and with the State and Tribal Historic Preservation Offices, including identification of NRHP eligible sites and development of a Cultural Resource Management Plan.

### ***Executive Order 13007, Indian Sacred Sites***

Executive Order 13007, “Indian Sacred Sites” (May 24, 1996), directs federal land managing agencies to accommodate access to, and ceremonial use of, Indian sacred sites by Indian religious practitioners, and to avoid adversely affecting the physical integrity, accessibility, or use of sacred sites. It is important to note that a sacred site may not meet the NRHP criteria for a historic property and that a historic property may not meet the criteria for a sacred site. It is also important to note that sacred sites may not be identified solely in consulting with tribes located within geographic proximity of the project. Tribes located outside the direct impact area the plan area may also have ties (e.g., religious, subsistence) to lands within the plan area and should be included in the consultation process.

EPA recommends that the FWS include in the EIS a description of how it will identify and address the existence of Indian sacred sites in the project areas. We recommend the FWS include a discussion of how it would ensure that the proposed action would avoid or mitigate for the impacts to the physical integrity, accessibility, or use of sacred sites.